No. 477

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CHARLES ELMO

IN THE

Supreme Court of the United States.

BARKER PAINTING COMPANY,

Petitioner,

—against—

LOCAL NO. 734, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA; BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA; GEORGE W. HOFFMAN and HARRY S. WARREN,

Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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SUBJECT INDEX.

PAGE

ANSWER TO PETITION FOR WRIT OF CERTIORARI..... 1

BRIEF IN SUPPORT OF ANSWER..... 7

STATEMENT OF THE CASE..... 7

POINT I—The bill was properly dismissed in the District Court because the plaintiff did not sustain irreparable injury and because it had an adequate remedy at law..... 11

POINT II—The District Court had no jurisdiction of the case either on the basis of diversity of citizenship or on constitutional grounds..... 11

POINT III—The Circuit Court of Appeals properly refused to re-open the question..... 13

POINT IV—The Circuit Court of Appeals properly dismissed the bill because it presented a moot question 14

POINT V—The acts of the defendant in attempting to enforce the Brotherhood Rule do not constitute a boycott..... 16

POINT VI—The Brotherhood Rule does not constitute a combination in restraint of trade in violation of the Sherman and Clayton Acts..... 17

POINT VII—The rule of the Brotherhood is not unreasonable 19

POINT VIII—The Construction of the New Jersey Statute by the Court of Errors and Appeals of that State does not render the said Statute offensive to the provisions of the Fourteenth Amendment 23

CONCLUSION—It is respectfully submitted that the petition for certiorari herein be dismissed..... 24

TABLE OF CASES AND AUTHORITIES CITED:

Barker Painting Company v. *Brotherhood of Painters, Decorators and Paperhangers of America*, unreported 17
Bedford Cut Stone v. *Journeymen S. C. Asso.*, 274 U. S. 37 15
Civil Rights Cas., 109 U. S. 3 12
Griffith v. *Connecticut*, 218 U. S. 563 12
Jonas Glass Co. v. *Glass Bottle Blowers Asso.*, 77 N. J. E. 219 23
New Jersey Painting Co. v. *Local No. 26*, 96 N. J. E. 632 23
Thompson Machine Co. v. *Brown*, 89 N. J. E. 326 15
U. S. v. *Cruikshank et al.*, 92 U. S. 542, 554 12
Vicksburg Water Works v. *Vicksburg*, 185 U. S. 66 .. 15
Virginia v. *Rives*, 100 U. S. 313, 318 12
Walston v. *Nevin*, 128 U. S. 578 12
Williams v. *Bruffy*, 96 U. S. 176 12
Bouvier's Law Dictionary—"Boycott", 16 R. C. L., p. 477 16
Black—Law Dictionary—"Boycott" 16
Words and Phrases—"Boycott" 16
3 Comp. Stat. of N. J., p. 3051 23

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Respondents.

Answer to Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The answer of Local No. 734, Brotherhood of Painters, Decorators and Paperhangers of America; Brotherhood of Painters, Decorators and Paperhangers of America; George W. Hoffman and Harry S. Warren, respondents in the above case,

RESPECTFULLY REPRESENTS:

1. The respondents deny that the bill in equity set forth in paragraph "1" of the petition was filed to enjoin

the enforcement of the rule of the Brotherhood of Painters, Decorators and Paperhangers of America which requires an employer, performing work other than in his home city, to pay the wage scale, either of his home city or of the place where the work is being performed, whichever be the higher.

They likewise deny the allegation contained in paragraph "1" of the petition to the effect that the proof on final hearing on the said bill showed that the petitioner complied with all Union conditions as to hours, wages, etc., for the territory including Somerville, New Jersey; that all workers employed by the petitioner were satisfied with the wages paid by the petitioner; that the defendant George W. Hoffman made any threats to the petitioner; that the petitioner's employees ceased working only because they feared that they would be expelled from the Union if they continued at work; that the painting industry in Somerville, New Jersey was in effect 100% organized, and that all other branches of the building industry in New York, Northern New Jersey, Connecticut and Pennsylvania were so organized and that no painting work could be done or performed except with union labor, and that the Brotherhood of Painters, Decorators and Paperhangers of America threatened to compel petitioner and all other painting contractors to comply with the rule of the Brotherhood above mentioned by strikes and boycotts.

2. The respondents deny the allegations of paragraph "2" of the petition herein to the effect that the bill herein was filed to enjoin the enforcement of the rule of the Brotherhood above mentioned; that the alleged interference with the performance of the particular contract mentioned in the bill was set forth merely as

an overt act and that there was any actual interference with the performance of the petitioner's contract by the respondents.

3. They admit the paragraphs of the petition herein numbered "3", "4", "5", "6", "11" and "13".

4. They deny the allegations contained in paragraphs "7" and "10" of the petition.

5. They deny the allegations in paragraph "8" of the petition to the effect that the Circuit Court of Appeals, in declining to review the decree dismissing the bill upon its merits, decided an important question of general law in an untenable way and in conflict with the weight of authority; that the matter decided by the District Court is of much general importance and of far-reaching effect; that the District Court adopted a construction by the Court of Errors and Appeals of New Jersey of a statute of New Jersey, which thus construed is offensive to the Fourteenth Amendment of the Constitution.

6. They deny that the refusal of the Circuit Court of Appeals to decide the instant case on its merits had the effect of giving to its prior decision the quality of *res adjudicata,* as alleged in paragraph "9" of the petition.

7. They deny the allegations in paragraph "14" of the petition to the effect that the Court of Errors and Appeals of the State of New Jersey in the case of *New Jersey Painting Co.* v. *Local No. 26,* 96 N. J. E. 632, in construing a statute of the State of New Jersey, overruled its previous decision involving the construction

of the said statute and that the said statute so construed by the New Jersey Court of Errors and Appeals is violative of Article 1, par. 1 of the New Jersey Constitution and with the provisions of the Fourteenth Amendment to the Constitution of the United States.

8. The respondents respectfully show and represent that the question raised by the instant petition for a Writ of Certiorari has been submitted to this Court on two previous occasions and that on both occasions such petitions have been denied (*Barker Painting Company* v. *Brotherhood of Painters, Decorators and Paperhangers of America et al.*, 273 U. S. 747; *Barker Painting Company* v. *Brotherhood of Painters, Decorators and Paperhangers of America*, 276 U. S. 631).

In the case first above mentioned (273 U. S. 747), the petition was from a decision of the Circuit Court of Appeals in the same Third Circuit in an action between practically the same parties and involving precisely the same question, *i. e.*, the validity of the rule of the Brotherhood of Painters, Decorators and Paperhangers of America attacked herein.

The issue was raised on an application for a preliminary injunction, but the question was argued and decided on the merits.

Counsel for the respondents has examined the papers on the said petition for a Writ of Certiorari and hereby quotes the following allegations of the said petition in support of the above averment.

> "There was no dispute as to the essential facts on which plaintiff based its case.
>
> The Brotherhood of Painters is a Labor Union of nationwide scope, with District and Local

branches throughout the United States. It has fixed various scales of wages and working conditions applicable to the various localities within its jurisdiction, that for Philadelphia being $8 per day for a 5½-day week, that for New York being $10.50 per day for a five-day week, the wages fixed for the other localities varying from the $10.50 per day in New York down to $6 in Waynesburg, Pa. Defendant has a union rule that whenever the wage scale fixed for the locality where the work is done is lower than that fixed for the place where the employer's principal office is located, the employer, even though he employ none but local men, must in every case pay the higher scale, and must also observe any more favorable working conditions applicable to the employer's home city."

* * * * * * * *

"While the case at bar involved an application for preliminary injunction, the case was argued and decided on the merits. The only question involved in the case is the legality of defendants' union rule. This question was squarely raised and decided in the proceedings here sought to be reviewed, and could be no more directly presented to this Court by any additional proceedings."

The said petition, which was denied by this Court, therefore clearly involved the identical questions sought to be reviewed in the present proceeding.

Barker Painting Company v. *Brotherhood of Painters, Decorators and Paperhangers of America,* 276 U. S. 631, was a petition for a Writ of Certiorari directed to the Court of Appeals for the District of Columbia.

Counsel for respondents has had no opportunity to

examine the said petition, but is fully familiar with the action, which was instituted in the Supreme Court of the District of Columbia and the respondents hereby aver that the said action was likewise brought to enjoin the defendants from the enforcement of the rule under consideration upon the alleged ground that the same was contrary to public policy and illegal.

The bill of complaint in the said action was dismissed on the merits by the Supreme Court of the District of Columbia, whose judgment was affirmed on appeal by the Court of Appeals of the said District.

WHEREFORE, respondents respectfully pray that the petition be dismissed.

LOCAL NO. 734, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA:

BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA:

GEORGE W. HOFFMAN and
HARRY S. WARREN.

MORRIS HILLQUIT,
Attorney for Respondents.

BRIEF IN SUPPORT OF ANSWER.

Statement of the Case.

(The references are to pages in the Transcript of the Record in the Circuit Court of Appeals.)

The facts in the case are substantially as follows:

The defendant, Brotherhood of Painters, Decorators and Paperhangers of America, hereinafter designated as the Brotherhood, is a national labor union composed of workers in the various branches of the painting and paperhanging industry, about one hundred thousand (100,000) in number, who are represented by approximately one thousand two hundred and fifty (1,250) local unions in all parts of the United States and Canada (p. 101).

Local No. 734 is one of such local unions of the Brotherhood and represents the organized painters of Somerville, in the State of New Jersey.

The defendant George W. Hoffman is the business agent of a labor organization which includes Local No. 734, and the defendant Harry S. Warren is an organizer of the Brotherhood.

The Brotherhood as such does not fix the wage scales of its members nor does it enter into agreements with employers or associations of employers. These functions are left to the local unions (p. 107). The functions of the Brotherhood are confined to matters of general and common interest to all members of the organization. For

that purpose, the Brotherhood has adopted a constitution consisting of rules of a general character applicable to all its members and subordinate organizations. In the convention of the Brotherhood held at Dallas, Texas, in the month of September, 1921, certain amendments to the constitution were proposed and subsequently ratified by the membership, which amendments were thereafter incorporated in the constitution as Sections 132 and 133, and read as follows:

> "Sec. 132. Neither the General Executive Board nor any other authority shall have power to grant exclusive or special privileges to any local union or district council working under a charter of this Brotherhood; nor shall the G. E. B. or any other authority be invested with power to force any employer to bring men from one city to work in another city if union men can be procured in such city where the work is to be erected and finished. All conditions of such localities shall be strictly adhered to, the shorter work day and the higher scale of either locality to prevail in all cases. A card fully paid up, regardless of where it is issued, shall entitle the holder to the right to work in any city provided he conforms with the working rules and conditions of the locality and that no strike or lockout exists in that locality.
>
> When a contractor, builder or boss painter does any work pertaining to our trade outside his home city or town—and in a locality where a District Council or a Local Union exists—not less than fifty (50) per cent. of the men in such district shall be employed on all work coming within the jurisdiction of the Brotherhood of Painters, Decorators and Paperhangers of America as defined in the General Constitution.

Sec. 133. A member leaving the jurisdiction of the local union in which he is a member to work for his employer on a job in the jurisdiction of another local union must comply with the working rules and laws of that locality and demand in all cases the shorter work day and the higher scale." (Plaintiff's Exhibit 2, pp. 147, 148).

The Barker Painting Company is a New York corporation with headquarters in New York City.

On or about the 8th day of November, 1924, it entered into a contract to do the painting work of a building in process of construction in Somerville, New Jersey, known as the Somerset Hospital (Bill, par. 8).

At the time the controversy between the parties hereto arose, the prevailing scale of painters' wages in Somerville, New Jersey, was Eight ($8) Dollars per day. The prevailing wage scale in the City of New York was Ten and 50/100 ($10.50) Dollars per day.

At the time it took the contract for the Somerset Hospital the plaintiff was fully aware of the provisions of the Constitution of the Brotherhood above quoted and knew that the Court of Errors and Appeals of New Jersey had upheld their validity in May, 1924, *i. e.,* six months before it undertook the Somerville work. On two previous jobs which the plaintiff did in Kearny and Newark, New Jersey, it had paid the New York rate of wages which was higher than the local rate (pp. 45, 46).

On the Somerville job the plaintiff paid its painters the local rate of Eight ($8) Dollars per day and proceeded on that basis until about 30% of the work was done.

At that point the infraction of the Brotherhood rule called to the attention of the defendant Hoffman, business agent of Local No. 734, by the Brotherhood organizer Warren. Hoffman in turn brought the situation to the attention of the plaintiff and demanded the New York rate of wages for the painters employed on the Somerville job.

Upon the plaintiff's refusal to accede to the request, Hoffman informed the Brotherhood members of the plaintiff's position and reminded them that under the provisions of the Brotherhood Constitution it was their duty to demand the New York rate of wages, *i. e.*, Ten and 50/100 ($10.50) Dollars a day.

Such employees thereupon quit work on the plaintiff's Somerville job (pp. 49, 51, 53, 56, 57).

There was no formal declaration of a strike, no picketing and no acts of violence or disorder.

Upon this state of facts the plaintiff obtained a preliminary injunction in substance restraining the defendants from ordering, encouraging or aiding any strike or cessation of work against the plaintiff.

The injunction was mandatory in character restraining the workmen from not returning to work. Upon its issuance the work was resumed and fully completed on the basis of the local wage scale of $8 a day.

Upon the trial the injunction was dissolved and the plaintiff's bill dismissed on the merits.

Thereafter the plaintiff appealed from the judgment and decree of the District Court to the Circuit Court of Appeals for the Third Circuit, which court affirmed the decree of the District Court for the reasons stated in the opinion of said Court (attached to the record herein), refusing to go into the merits of the case.

It is this decision of the Circuit Court of Appeals that is sought to be reviewed by certiorari.

POINT I.

The bill was properly dismissed in the District Court because the plaintiff did not sustain irreparable injury and because it had an adequate remedy at law.

From the undisputed facts in the case it appears that the plaintiff was in no way damaged by the refusal of its workers to continue working at the wage rate of $8 per day. That refusal was followed immediately by an injunction, in effect directing the workers to return to work at the $8 rate, which injunction was fully complied with.

The work was thus completed at the wage rate contended for by the plaintiff, and the only damage which plaintiff could have sustained was that arising from the short delay between the workers' refusal to continue at the local wage rate and the issuance of the injunction.

Such damage is readily ascertainable and computable and could be recovered from the defendants in an action at law.

POINT II.

The District Court had no jurisdiction of the case either on the basis of diversity of citizenship or on constitutional grounds.

If the plaintiff relies on diversity of citizenship it was incumbent upon it to prove the allegations of

paragraph "13" of its bill to the effect that "the matter of controversy exceeds, exclusive of interest and costs, the sum or value of Three thousand ($3,000) Dollars."

This the plaintiff has not proved.

The sum to be paid to the plaintiff for the painting of the Somerset Hospital was Seventy-eight hundred ($7800) Dollars (p. 143). If the entire amount represented nothing but the cost of labor to be paid by the plaintiff to his workers the difference between $8 per day and $10.50 per day would amount to considerably less than Three thousand ($3,000) Dollars. But as above stated the plaintiff, as a matter of fact, completed the whole work at $8 per day and thus sustained no damage whatsoever.

The constitutional ground relied on by the plaintiff is that the rule of the Union is offensive to the provisions of the Fourteenth Amendment of the Constitution of the United States.

This contention is entirely untenable on the face thereof. The Fourteenth Amendment has reference solely to actions of the State and not to any actions of private individuals.

Civil Rights Cas., 109 U. S. 3;
Virginia v. *Rives*, 100 U. S. 313, 318;
U. S. v. *Cruikshank et al.*, 92 U. S. 542, 554.

And even if the rule of the Brotherhood under attack be given the same effect as a statute passed by a State legislature, it does not offend the Fourteenth Amendment because it operates alike on all persons similarly situated.

Griffith v. *Connecticut*, 218 U. S. 563;
Walston v. *Nevin*, 128 U. S. 578;
Williams v. *Bruffy*, 96 U. S. 176.

POINT III.

The Circuit Court of Appeals properly refused to re-open the question.

In November, 1925, the Barker Painting Company, the petitioner herein, instituted an equity suit in the District Court of the United States for the Eastern District of Pennsylvania against the Brotherhood of Painters, Decorators and Paperhangers of America, one of the respondents herein, to procure an injunction restraining the said Brotherhood from enforcing Sections 132 and 133 of its Constitution. On a motion for preliminary injunction the District Court, after a full oral hearing, denied the motion on the merits, holding that the said provisions of the Brotherhood Constitution were not unlawful. Thereafter the plaintiff appealed to the Circuit Court of Appeals for the Third Circuit, which affirmed the order of the Court below in an elaborate opinion (15 Fed. (2nd) 16).

The appeal to the Circuit Court of Appeals in the instant case involved precisely the same question as was involved in the earlier case, although in one case the appeal was from the final judgment, while the other involved an application for preliminary injunction.

On this point counsel again respectfully directs the attention of the Court to the statement contained in the petition for a Writ of Certiorari in the case first passed upon by the Circuit Court of the Third Circuit and which reads as follows:

> "While the case at bar involved an application for preliminary injunction, the case was argued and decided on the merits. The only question

involved in the case is the legality of defendants' union rule. This question was squarely raised and decided in the proceedings here sought to be reviewed, and could be no more directly presented to this Court by any additional proceedings."

POINT IV.

The Circuit Court of Appeals properly dismissed the bill because it presented a moot question.

The action herein was not instituted to restrain the defendant Brotherhood from enforcing the rule under discussion everywhere and under all circumstances. It is very doubtful whether a bill of such nature could be framed and maintained.

The bill sought to restrain the defendants from interfering with the plaintiff's work at a particular time and place, *i. e.*, its work on the Somerset Hospital, which was being done in the month of March, 1925. The work on that particular building is set forth as the basis of the bill in paragraph 9 thereof, and while the relief prayed for includes an adjudication that the Union rule in question is illegal and void, it is primarily addressed to a demand that the defendants be enjoined and restrained from ordering or continuing a strike against the particular premises, and since the building was fully completed before the case reached the Circuit Court of Appeals there was no real controversy before that Court.

The Circuit Court of Appeals disposes of the question in the following language:

> "Thus it is clear the questions which the plaintiff has raised are moot because, having been

saved from injury throughout the work by the preliminary injunction, it has sustained no damage by the defendants' abortive enforcement of its rules. While as a matter of fact, or, perhaps, a matter to be inferred from the averments of the bill or from their past practices, the defendants propose to continue to enforce their rules, it does not follow necessarily that they will enforce them against the plaintiff or that the plaintiff will continue in business, or that, continuing in business, it will suffer by the rules' enforcement."

The authorities cited by the petitioner in its brief herein (*Bedford Cut Stone* v. *Journeymen S. C. Asso.*, 274 U. S. 37; *Thompson Machine Co.* v. *Brown*, 89 N. J. E. 326, and *Vicksburg Water Works* v. *Vicksburg*, 185 U. S. 66) have no bearing on the point under discussion.

All that these cases hold is that a court of equity will not wait for the damage actually to have been sustained but will restrain an unlawful act upon a threat to cause damage.

None of these authorities go to the extent of holding that if a concrete controversy is settled, a court of equity will issue an injunction on the ground that another and similar controversy between the parties may arise on some other and future occasion.

POINT V.

The acts of the defendant in attempting to enforce the Brotherhood Rule do not constitute a boycott.

The essential features of a boycott involve the following elements:

(1) An organized combination

(2) directed against specific persons or corporations

(3) with intent to do them injury or harm

(4) by inducing others to withdraw business intercourse

(5) through threats, violence or other coercive measures.

Bouvier's Law Dictionary—"Boycott", 16 R. C. L., p. 477;
Black—Law Dictionary—"Boycott";
Words and Phrases —"Boycott".

None of these elements is present in the case at bar. The defendants did not attempt to induce anybody to withdraw business patronage or intercourse from the plaintiff. All they said was that their particular members would not work for the plaintiff for less than a stipulated wage rate. Their object is not to hurt the plaintiff but to benefit themselves. They did not resort to violence or intimidation and did not seek to coerce third parties to sever business relations with the plaintiff. They were purely passive in their refusal to accept plaintiff's terms of payment for their labor.

At most, the conduct of the defendants may be characterized as a strike for the enforcement of a union rule voluntarily adopted, and such a strike is entirely lawful.

POINT VI.

The Brotherhood Rule does not constitute a combination in restraint of trade in violation of the Sherman and Clayton Acts.

As was said by Mr. Justice Smith of the Supreme Court of the District of Columbia in the similar case of *Barker Painting Company* v. *Brotherhood of Painters, Decorators and Paperhangers of America,* in an unreported opinion:

> "The terms trade and commerce as used in the Sherman Act mean interstate traffic, the interstate purchase, sale, or exchange, of commodities, the interstate transportation of persons and property, and possibly the interstate transmission of messages. *Gloucester Ferry Co.* v. *Pennsylvania,* 114 U. S. 196, 203. Section 6 of the Clayton Act expressly provides that the labor of a human being is not a commodity or an article of commerce and that labor organizations shall not be construed to be illegal combinations or conspiracies in restraint of trade under anti-trust laws. Reading the Sherman Act and the Clayton Act together, it is apparent that the Brotherhood of Painters, Local Union No. 368, and the members thereof, cannot be regarded as a combination or conspiracy in restraint of trade or commerce."

And again:

> "But, however that may be, Section 6 of the Clayton Act specifically excludes the labor of human beings from the category of commodities or articles of commerce, and from that it necessarily results that defendants' collective rejection of employment for non-acceptance of the Brotherhood's 'higher wage' and 'shorter work' rules was not an interference with the purchase, sale, exchange, or transportation of commodities, and consequently was not a restraint of trade or commerce."

And again:

> "The plaintiff was not restrained by the defendants from the buying, selling, exchanging, or transportation of goods, wares or merchandise, and no such restraint could be exercised inasmuch as plaintiff's business was not of that kind. The business of the Barker Painting and Decorating Company is painting and decorating not merchandising or the transportation of persons or property, and therefore its business is not trade or commerce within the meaning of the Sherman Act. The plaintiff contracts to paint and decorate and its contracts are governed by the law of the place in which they are made or in which they are to be performed. Such contracts are not commodities and 'are not interstate transactions though the parties may be domiciled in different states'. *Paul* v. *Virginia*, 8 Wall. 168, at page 183."

POINT VII.

The rule of the Brotherhood is not unreasonable.

A union of workers is not called upon to justify a strike of its members. If such strike is claimed to be unlawful because called for an unlawful object or conducted by unlawful means, the burden of proving such unlawfulness rests upon the party asserting the same.

But even on the theory that the union is charged with the duty of justifying the strike, the defendants have fully met the test in this case.

The strike alleged to be called or threatened by them was for the purpose of enforcing the provisions in their constitution set forth in Sections 132 and 133.

The motive and object of the Brotherhood of Painters, Decorators and Paperhangers of America in adopting the said rule are explained by the witness Joseph F. Kelley, Vice-President of the Brotherhood substantially as follows: The employing painters in the United States may be divided into two classes with respect to the scope and character of their work, to wit, local concerns, who confine their work to their own localities, and national concerns, who are called upon to do work in all parts of the country. The home offices of the latter center principally in the largest cities such as New York, Chicago and Boston. The work done by such "national" painting contractors is distinguished from that ordinarily done by local concerns qualitatively or quantitatively, *i. e.*, it is either decorative work on especially fine buildings, such as public buildings, churches, theatres, banks or

expensive private residences or work of a commercial character involving large operations, such as loft or office buildings, manufacturing plants or wholesale housing developments.

Since both of such classes of work are apt to be in great demand in the large cities and industrial centers, such places attract and develop journeymen painters of skill and efficiency above the average and their rate of wages are fixed accordingly.

In smaller towns and localities, the ordinary painting work is as a rule done by local contractors, employing local workers, but when such a town requires painting work on an especially fine building or on an operation of unusual size, the work is frequently given to "national" painting contractors, *i. e.*, large concerns with a national reputation whose home office is in New York, Chicago or other large city. The "national" contractor in such case bases his charges on the labor cost at his home town, unless the local wage rate is higher, which is very rarely the case (pp. 101-110).

Since the special character of the work, which the national contractor is called on to do in small towns, often requires a higher degree of skill or experience than that possessed by the local journeymen painters, the contractor as a rule sends a number of his employees into such town to do all or part of the work.

This custom has given rise to a complexity of problems within the industry. Local artisans complained of being displaced by painters coming from New York or other large centers to do jobs in their localities, and in order to do justice to such local workers while taking account of the special needs of the builder, the rule was established to the effect that at least one-half of the

painters employed on a local job shall be workers of the locality.

Another serious problem arising from the situation concerned the terms of employment, *i. e.*, wages and hours of labor on such jobs. If we assume that a painting job is being done on a building in the State of New Jersey by an employing painter of the City of New York, and that twenty men are employed on the job, one-half of them coming from New York where the prevailing rate of wages is $10.50 per day, and the other half coming from the particular locality in New Jersey, where the prevailing wage is $8.00 per day, and the men are doing the same work, the question arises what scale is to be applied to the job. Three possibilities presented themselves to the convention of the Brotherhood in its attempt to solve the problem:

1. The payment of different wage rates to the workers engaged in the same work on the same job. This was rejected as an unjustifiable discrimination and as a practice apt to create jealousies and antagonisms among the workers and to impair the efficiency of their work as well as the integrity and morale of the organization.

2. To apply the lower wage rate, prevailing in the locality, to all workers on the job. This, too, was rejected for the reason that it would be manifestly unfair to require, say a worker coming from New York and compelled to live away from home, to work for a smaller wage than he would receive if he had remained working at home.

3. To apply the higher scale to all workers engaged on the job. This was adopted as the most equitable solution, and one most nearly just to both classes of workers, as well as to the employer. A contracting firm of New York or other large center in undertaking a country job always figures upon the wages and cost of production prevailing in his home territory, and a country builder engaging a New York painting contractor, figures on New York costs and is prepared to pay somewhat more than he would have to pay to a local contractor.

Whether the rule thus adopted by the Brotherhood is wise and whether it represents the best possible solution of the problem of migratory labor in the painting industry is a question upon which opinion may be divided, but it is not questioned and cannot be questioned that the rule was adopted by the members of the Brotherhood in good faith and in the belief that its enforcement would prevent unfair discrimination and destructive jealousies and rivalries among its members and result in the preservation of their standard of life without doing an injustice to the employers.

Thus viewed, it is a condition which the organized painters of this country attach to their labor in the same way as the wage scale, work hours and other conditions upon which they are willing to perform work for employers.

The rule thus established by the Brotherhood has the triple aspect of a wage regulation, an effort to secure equitable distribution of work among its members and of a measure to preserve the integrity of the organization and harmony among its members, and it is re-

spectfully submitted that all of these are legitimate objects of trade union activity.

POINT VIII.

The Construction of the New Jersey Statute by the Court of Errors and Appeals of that State does not render the said Statute offensive to the provisions of the Fourteenth Amendment.

That statute (3 Comp. Stat. of N. J., p. 3051) reads as follows:

> "that it shall not be unlawful for any two or more persons to unite, combine or bind themselves by oath, covenant, agreement, alliance or otherwise, to persuade, advise or encourage, by peaceable means, any person or persons to enter into any combination for or against leaving or entering into the employment of any person, persons or corporation."

In *Jonas Glass Co. v. Glass Bottle Blowers Asso.*, 77 N. J. E. 219, the Chancellor held that the statute above quoted should be treated "as merely rendering the combination no longer indictable".

In *New Jersey Painting Co.* v. *Local No. 26,* 96 N. J. E. 632, the Court of Errors and Appeals held that the expression of the Chancellor above quoted in the *Jonas Glass Co.* case was not necessary to the decision of the case and was *obiter dictum.* The highest Court of the State of New Jersey thus held that the said statute permits the combination therein described for all purposes.

The statute is in effect a re-statement of the generally accepted law on this subject, and there is nothing in it to offend the provisions of the Fourteenth Amendment.

CONCLUSION.

It is respectfuly submitted that the petition for certiorari herein be dismissed.

All of which is respectfully submitted.

Dated, November 22, 1929.

MORRIS HILLQUIT,
Attorney for Respondents.